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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,532	10/25/2001	Douglas S. Nordgren	47097-01005	2558
30223	7590	06/21/2004	EXAMINER	
JENKENS & GILCHRIST, P.C. 225 WEST WASHINGTON SUITE 2600 CHICAGO, IL 60606			DEL SOLE, JOSEPH S	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/001,532

Applicant(s)

NORDGREN ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 10-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/7/04. The Examiner suggests cancellation of nonelected claims accompanying a reply to this final rejection.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kruelskie (3,914,085).

Kruelskie teaches the vertically and horizontally adjustable lip assembly (Fig 2, #21) for an extrusion die (Fig 1, #13) for adjusting the width and thickness of extrudate during operation of the die, as claimed in claims 1-5, the assembly having a first die lip having a first end (Fig 2, #38); a first end block (Fig 2, #43) adjacent to the first end of the first die lip; a second die lip (Fig 2, #38a) having a first end and adjacent to and spaced from the first die lip and the first end block to define a gap (Fig 2) between the first die lip and the first end block and the second die lip; a second end block (Fig 2, #43a) adjacent to the first end of the second die block; a first adjustment mechanism

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(Fig 2, #39) coupled to the first die lip for moving the first die lip and the first end block parallel to the second die lip and the second end block to adjust extrudate width (col 2, lines 48-51 and lines 56-59 and col 3, lines 21-24); a second adjustment mechanism (Fig 2, #34) coupled to the first die lip for moving the first die lip and the first end block perpendicular to the second die lip and the second end block to adjust extrudate thickness (col 3, lines 14-21); a third adjustment mechanism (Fig 2, #39a) coupled to the second die lip for moving the second die lip and the second end block parallel to the first die lip to adjust extrudate width (col 2, lines 48-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24); a fourth adjustment mechanism (Fig 2, #34a) coupled to the second die lip for moving the second die lip and the second end block perpendicular to the first die lip and the first end block to adjust extrudate thickness (col 3, lines 14-21); the lip assembly is mounted on an outside surface of the die (Figs 1-3) and the first adjustment mechanism and the second adjustment mechanism are operable during operation of the extrusion die to adjust the width and thickness of the extrudate (col 3, lines 38-40); likewise, as claimed in claims 5-7, Kruelskie teaches an adjustable lip assembly (Fig 2, #21) for an extrusion die (Fig 1, #13) for adjusting the width and thickness of extrudate during operation of the die, having a first die lip having a first end (Fig 2, #38); a first end block (Fig 2, #43) adjacent to the first end of the first die lip; a second die lip (Fig 2, #38a) parallel and adjacent to the first die lip and the first end block, the second die lip spaced from the first die lip to define a gap therebetween (Fig 2), the second die lip including a first end; a second end block (Fig 2, #43a) adjacent to the first end of the second die lip; a first mechanism (Fig 2, #39) for moving the first die

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lip and the first block parallel to the second die lip and the second block during operation of the die to widen and narrow the width of the gap (col 2, lines 48-51 and lines 56-59 and col 3, lines 21-24 and lines 38-40; in interpreting "one of said first die lip and said first block and said second die lip and said second block" the Examiner has grouped "said first die lip and said first block" as one grouping and "said second die lip and said second block" as the alternative grouping and furthermore "first block" is the same as "first end block" and "second block" is the same as "second end block"); a second mechanism (Fig 2, #34) for moving the first die lip and the first block perpendicular to the second die lip and the second block to increase and decrease the height of the gap (col 3, lines 14-21); a third mechanism (Fig 2, #34a) for moving vertically the second die lip and the second block (col 3, lines 14-21); a fourth adjustment mechanism (Fig 2, #39a) for moving horizontally the second die lip and the second block (col 2, lines 48-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24); and further likewise, as claimed in claims 8-9, Kruelskie teaches an adjustable foam die assembly (Fig 2, #21, col 3, lines 49-52, although Kruelskie does teach the assembly for foam, the Examiner notes that the limitation "foam" itself does not limit the apparatus because it is an intended use limitation), having a top adaptor (Fig 2, #30); a bottom adaptor (Fig 2, #31); a top die lip (Fig 3, #38), the top die lip mounted on the top adaptor to allow vertical and horizontal movement of the top die lip relative to the top adaptor (Fig 3, the top die lip is mounted on the top adaptor through attachment means 34, 36 and 39); a bottom die lip (Fig 2, #38a), the bottom die lip mounted on the bottom adapter to allow vertical and horizontal movement of the bottom die lip relative to the

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bottom adaptor (Fig 3, the bottom die lip is mounted on the bottom adaptor through attachment means 34a, 36a and 39a); a first horizontal adjustment mechanism (Fig 2, #39) coupled to the top die lip for moving the top die lip horizontally relative to the top adaptor and the bottom lip (col 2, lines 48-51 and lines 56-59 and col 3, lines 21-24); a second horizontal adjustment mechanism (Fig 2, #39a) coupled to the bottom lip for moving the bottom die lip horizontally relative to the bottom adaptor and the top lip (col 2, lines 48-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24); a top vertical adjustment mount (Fig 3, #36) secured to the top lip for vertically adjusting the top lip relative to the bottom lip and the top adaptor (col 2, lines 43-48 and col 3, lines 14-21); a bottom vertical adjustment (Fig 3, #36a) secured to the bottom lip for vertically adjusting the bottom lip relative to the top lip and the bottom adaptor (col 2, lines 43-48 and col 3, lines 5-10 and lines 14-21); a first end block (Fig 3, #43) mounted adjacent to the top die lip and moveable horizontally and vertically therewith by the first horizontal adjustment mechanism and the top vertical adjustment mount (col 2, lines 43-51 and lines 56-59 and col 3, lines 14-21), and a second end block (Fig 3, #43a) mounted adjacent to the bottom die lip and moveable horizontally and vertically therewith by the second horizontal adjustment mechanism and the bottom vertical adjustment mount (col 2, lines 43-51 and lines 56-59 and col 3, lines 5-10 and lines 21-24).

#### ***Response to Arguments***

4. Applicant's arguments filed 6/17/04 have been fully considered but they are not persuasive.

The Applicant argues that each independent claim recites limitations not disclosed, taught, or suggested by Kruelskie.

The Examiner disagrees and reaffirms that all limitations are taught as set forth again above in the 35USC102(b) rejection.

The Applicant argues that Kruelskie differs from the claimed invention because Kruelskie discloses an extrude sizing or guide assembly with adjustable shaping members and forming members, such assembly being located past the location of the extrusion orifice. Further, the Applicant argues that Kruelskie describes extruding foam from the orifice then using forming faces after the foam has been extruded to control dimensions of the formed foam.

The Examiner disagrees. The features of Kruelskie cited to reject the claims are part of the extruder and help to shape the product during the extrusion process. The orifice, 15, and the "sizing or guide assembly" are both part of the extrusion die.

The Applicant argues that Kruelskie does not disclose a first die lip parallel to a second die lip to adjust the extrudate width and does not disclose moving a first die lip perpendicular to a second die lip to adjust extrudate thickness.

The Examiner disagrees. It is the Examiner's intention to interpret the claims as broadly as they are recited. Since the recited features of Kruelskie read on die lips that are movable to adjust extrudate size, as discussed above, the inventions of claims 1-9 are anticipated. Extrudate is first delivered from the extruder upon leaving sizing mechanism 21 and therefore the lips of Kruelskie (as set forth by the Examiner above) are die lips. The die lips of Kruelskie (Reference #s 38 and 38a) extrude extrudate.

### **Conclusion**

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

*Joseph S. Del Sole*

J.S.D.  
June 17, 2004

*[Signature]*

ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP 1300-1700

6/17/04